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In re Application of	:	
GOUELIBO, et al.	:	
U.S. Application No. 09/381,752	:	DECISION ON
PCT No.: PCT/US97/05909	:	PETITION UNDER 37 CFR
Int. Filing Date: 24 March 1998	:	1.47
Priority Date: 28 March 1997	:	
For: SEMI-AUTOMATIC APPARATUS FOR	:	
AFFIXING ANTI-THEFT DEVICE TO	:	
AN ARTICLE	:	

This is a decision on applicants' "PETITION UNDER 37 CFR 1.47 CONCERNING A FILING UNDER 35 U.S.C. 371" filed 22 September 1999 to accept the application without the signature of joint inventor Alain Dememe. The requisite \$130 petition fee will be charged to Deposit Account No. 19-1346.

BACKGROUND

On 24 March 1998, applicant filed international application PCT/US97/05909 which claimed a priority date of 28 March 1997 and which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 08 October 1998. A proper Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date.

On 22 September 1999, prior to the expiration of thirty months from the priority date of the international application, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied inter alia, by: the requisite basic national fee; a copy of the international application; a declaration/power of attorney; and the present petition under 37 CFR 1.47.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1)

the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the nonsigning joint inventor. Applicant has satisfied items (1), (3), and (4).

Concerning item (2), Section 409.03(d) of the Manual of Patent Examining Procedure (MPEP) states, in part, "before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application paper (specification, including claims, drawings, and oath and declaration) to the nonsigning inventor for signature." A review of the present petition and the accompanying papers reveal that applicant has not satisfied the item (2) above, in that the applicant has not shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Mr. Dememe. Furthermore, it has not been demonstrated that an oath or declaration was presented to Mr. Dememe for his signature. Stated in a letter dated May 15, 1998 from attorney Nathaniel Levin to Mr. Dameme, "Please sign and date the enclosed Power of Attorney form and return it to me by express mail. Additionally, in a letter dated September 1, 1998 from Mr. Levin to Mr. Dameme, [p]ursuant to requirements of the PCT branch of the U.S. Patent Office, we again seek your cooperation in connection with this matter by requesting that you sign the enclosed "Request" form at the place indicated on Sheet No. 4 and then returning it to me by express courier. The mailing of the "Request" and power of attorney in conjunction with a prior petition is not considered a complete copy of the application paper (specification, including claims, drawings, and oath and declaration) Furthermore, it does not appear that the petitioner has first hand knowledge of the facts.

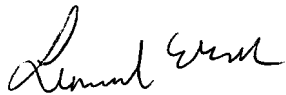
In order to meet the requirements of 37 CFR 1.47(a) and Section 409.03(d) of the MPEP, a statement of facts is needed from a person having first hand knowledge of the facts that a complete copy of the application papers was sent to Mr. Dememe and when such papers were sent. In addition, copies of documentary evidence such as a certified mail return receipt, cover letter of instruction, telegrams, etc., should be supplied with the declaration.

CONCLUSION

The petition under 37 CFR 1.47(a) is DISMISSED.

If reconsideration on the merits of this petition is desired, a proper response must be filed within ONE (1) MONTH from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Extension of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention to the PCT Legal Office.



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